

(2008) 02 DEL CK 0118
In the Delhi High Court
Case No : LPA No. 36 of 2008

Kamla Prasad Sharma

APPELLANT

Vs

Mehra Badarpur Service Station

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0118

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Nasreen Hasan, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No. 1167/2008

Exemption granted, subject to just exceptions.

LPA 36/2008

1. This appeal is directed against the order of the learned Single Judge dated 5th November, 2007 whereby the writ petition filed by the appellant was dismissed in liming. The aforesaid writ petition was filed by the appellant being aggrieved by the award dated 21st September, 2005 whereby the Industrial Adjudicator held that the appellant was not a workman defined u/s 2(s) of the Industrial Disputes Act, 1947 and that he was discharging duties of a manager, and, Therefore he could not be entitled to any protection as envisaged for a workman.

2. Termination of services of the appellant was subject matter of the dispute between the appellant-workman and the management. On the appellant-workman raising an industrial dispute, the appropriate government referred the same to the learned Labour Court on the following terms:

Whether the services of Shri Kamla Prasad Sharma S/o Shri Chander Sharma

have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Government notifications and to what other relief is he entitled and what directions are necessary in this respect?

3. The learned Industrial Adjudicator on receipt of the the aforesaid reference directed the parties to file their pleadings and also received evidence adduced by the parties. On appreciation of the aforesaid records and documents placed on record, the award dated 21st September, 2005 was passed, wherein it was recorded by the Industrial Adjudicator that the documents placed on record clearly indicate that the appellant was discharging duties of Manager. It was further held that a letter filed on record by the Management would indicate that the appellant himself admitted that he was working as Manager with the respondent though in his cross examination the appellant had denied his signature on the said letter. The learned Industrial Adjudicator further held that the said letter was written by the appellant. It is indicated from several other letters which were placed on record and signed by the appellant that the appellant was working as Manager. Industrial Adjudicator relied upon the said admissions on the part of the appellant clearly showing that he was in over all charge of M/s. Mehra Badarpur Service Station to hold that the appellant was doing supervisory work and was drawing a salary of Rs. 6,000/- per month and Therefore he could not have been a workman. Having held thus, it was concluded that the appellant was not entitled to any relief as he was not entitled to the benefit u/s 25F of the Industrial Disputes Act.

4. The appellant, being aggrieved by the aforesaid order, challenged the same by filing the aforesaid writ petition which was also dismissed in the same manner. The order passed by the learned Single Judge on 5th November, 2007 in the writ petition filed by the appellant herein is under challenge in this appeal.

5. Counsel for the appellant submits before us that the appellant joined the respondent as a sales man at a salary of Rs. 105/- on 1st June, 1966 and over the years he has been earning better pay and allowances, and that on the date when his services were terminated he was getting a salary of Rs. 6,000/- per month. It is however submitted that the appellant might have done some managerial work, but the same cannot be interpreted to mean that the appellant was doing managerial and supervisory work, as in fact the appellant was only a sales man and doing the work of sales man on behalf of the management. The said submission however was also raised before the Industrial Adjudicator and also before the learned Single Judge. The Industrial Adjudicator negated the said submission on the basis of records like Ext.MW1/1, which is a copy of the wages register for the month of March, 1992 showing the appellant as Manager. The said document came to prove that the appellant was in fact doing managerial and supervisory work although initially he was appointed as a salesman. Reference is also made to Ext.MW1/2 which is a copy of Form-G for the wages register for the month of November, 1992 which also shows the

appellant as Manager. Similarly, the Industrial Adjudicator also placed reliance on Ext.MW1/3, which is copy of a dairy report for the month of March, 1992 showing the appellant as Sales Manager, for coming to the conclusion that the appellant was discharging managerial, supervisory work. Reliance was also placed on Ext.MW1/4, which is copy of wages register for the month of April, 1999 showing the appellant as Manager. Reference was also made to Ext.WW1/M1 and WW1/M1/2 which are letters written by the management to Indian Oil Corporation and signed by the appellant as the Manager. Industrial Adjudicator has also relied upon various other documents like Ext.WW1/M3, Ext.WW1./M4 and Ext.WW1/M5. In all these documents, the appellant has described himself as Manager and also signed as such.

6. The findings which are recorded by the learned Industrial Adjudicator are findings of fact which are upheld by the learned Single Judge in the impugned judgment and order. This Court cannot and should not re-appreciate the findings of fact arrived at by the learned Industrial Adjudicator which are upheld by the learned Single Judge. Therefore, the learned Single Judge has rightly refused to entertain the writ petition under Article 226 by re-appreciating the evidence. The appellant has also admitted receiving salary of Rs. 6,000/- p.m. which fact leads to the one and only conclusion that the appellant was working as Manager and the provisions of Section 25F of the Industrial Disputes Act are not applicable to him. Therefore, we find no error in the judgment of the learned Single Judge and also of the learned Industrial Adjudicator. There is no merit in this appeal and the same is dismissed.